



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2866

Introduced 2/15/2008, by Sen. Donne E. Trotter

SYNOPSIS AS INTRODUCED:

815 ILCS 122/1-10
815 ILCS 122/2-5
815 ILCS 122/3-5
815 ILCS 122/4-5

Amends the Payday Loan Reform Act. In the definition of "payday loan", deletes an element that the loan have a finance charge exceeding an annual percentage rate of 36%. Provides that a lender may not charge more than \$10 (instead of \$15.50) per \$100 loaned on any payday loan over the term of the loan. In provisions regarding loan terms, provides that, in addition to any administrative fee, a lender may not charge interest on the amount of cash delivered to the consumer in an equivalent greater than 36% per annum and adds other requirements regarding rates. Requires a licensee to have unencumbered assets of at least \$50,000 per location. Prohibits placement of a new location within 2,500 feet of any business licensed under the Act. Prohibits a device or agreement that would have the effect of charging or collecting more interest than allowed by the Act, charging interest other than as authorized by the Act, or including any jury trial waiver or mandatory arbitration clause in loan documents. Effective immediately.

LRB095 19515 WGH 45821 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Payday Loan Reform Act is amended by
5 changing Sections 1-10, 2-5, 3-5, and 4-5 as follows:

6 (815 ILCS 122/1-10)

7 Sec. 1-10. Definitions. As used in this Act:

8 "Check" means a "negotiable instrument", as defined in
9 Article 3 of the Uniform Commercial Code, that is drawn on a
10 financial institution.

11 "Commercially reasonable method of verification" or
12 "certified database" means a consumer reporting service
13 database certified by the Department as effective in verifying
14 that a proposed loan agreement is permissible under this Act,
15 or, in the absence of the Department's certification, any
16 reasonably reliable written verification by the consumer
17 concerning (i) whether the consumer has any outstanding payday
18 loans, (ii) the principal amount of those outstanding payday
19 loans, and (iii) whether any payday loans have been paid in
20 full by the consumer in the preceding 7 days.

21 "Consumer" means any natural person who, singly or jointly
22 with another consumer, enters into a loan.

23 "Consumer reporting service" means an entity that provides

1 a database certified by the Department.

2 "Department" means the Department of Financial and
3 Professional Regulation.

4 "Secretary" means the Secretary of Financial and
5 Professional Regulation.

6 "Gross monthly income" means monthly income as
7 demonstrated by official documentation of the income,
8 including, but not limited to, a pay stub or a receipt
9 reflecting payment of government benefits, for the period 30
10 days prior to the date on which the loan is made.

11 "Lender" and "licensee" mean any person or entity,
12 including any affiliate or subsidiary of a lender or licensee,
13 that offers or makes a payday loan, buys a whole or partial
14 interest in a payday loan, arranges a payday loan for a third
15 party, or acts as an agent for a third party in making a payday
16 loan, regardless of whether approval, acceptance, or
17 ratification by the third party is necessary to create a legal
18 obligation for the third party, and includes any other person
19 or entity if the Department determines that the person or
20 entity is engaged in a transaction that is in substance a
21 disguised payday loan or a subterfuge for the purpose of
22 avoiding this Act.

23 "Loan agreement" means a written agreement between a lender
24 and consumer to make a loan to the consumer, regardless of
25 whether any loan proceeds are actually paid to the consumer on
26 the date on which the loan agreement is made.

1 "Member of the military" means a person serving in the
2 armed forces of the United States, the Illinois National Guard,
3 or any reserve component of the armed forces of the United
4 States. "Member of the military" includes those persons engaged
5 in (i) active duty, (ii) training or education under the
6 supervision of the United States preliminary to induction into
7 military service, or (iii) a period of active duty with the
8 State of Illinois under Title 10 or Title 32 of the United
9 States Code pursuant to order of the President or the Governor
10 of the State of Illinois.

11 "Outstanding balance" means the total amount owed by the
12 consumer on a loan to a lender, including all principal,
13 finance charges, fees, and charges of every kind.

14 "Payday loan" or "loan" means a loan ~~with a finance charge~~
15 ~~exceeding an annual percentage rate of 36% and~~ with a term that
16 does not exceed 120 days, including any transaction conducted
17 via any medium whatsoever, including, but not limited to,
18 paper, facsimile, Internet, or telephone, in which:

19 (1) A lender accepts one or more checks dated on the
20 date written and agrees to hold them for a period of days
21 before deposit or presentment, or accepts one or more
22 checks dated subsequent to the date written and agrees to
23 hold them for deposit; or

24 (2) A lender accepts one or more authorizations to
25 debit a consumer's bank account; or

26 (3) A lender accepts an interest in a consumer's wages,

1 including, but not limited to, a wage assignment.

2 "Principal amount" means the amount received by the
3 consumer from the lender due and owing on a loan, excluding any
4 finance charges, interest, fees, or other loan-related
5 charges.

6 "Rollover" means to refinance, renew, amend, or extend a
7 loan beyond its original term.

8 (Source: P.A. 94-13, eff. 12-6-05.)

9 (815 ILCS 122/2-5)

10 Sec. 2-5. Loan terms.

11 (a) Without affecting the right of a consumer to prepay at
12 any time without cost or penalty, no payday loan may have a
13 minimum term of less than 13 days.

14 (b) No payday loan may be made to a consumer if the loan
15 would result in the consumer being indebted to one or more
16 payday lenders for a period in excess of 45 consecutive days.
17 Except as provided under Section 2-40, if a consumer has or has
18 had loans outstanding for a period in excess of 45 consecutive
19 days, no payday lender may offer or make a loan to the consumer
20 for at least 7 calendar days after the date on which the
21 outstanding balance of all payday loans made during the 45
22 consecutive day period is paid in full. For purposes of this
23 subsection, the term "consecutive days" means a series of
24 continuous calendar days in which the consumer has an
25 outstanding balance on one or more payday loans; however, if a

1 payday loan is made to a consumer within 6 days or less after
2 the outstanding balance of all loans is paid in full, those
3 days are counted as "consecutive days" for purposes of this
4 subsection.

5 (c) No lender may make a payday loan to a consumer if the
6 total principal amount of the loan, when combined with the
7 principal amount of all of the consumer's other outstanding
8 payday loans, exceeds \$1,000 or 25% of the consumer's gross
9 monthly income, whichever is less.

10 (d) No payday loan may be made to a consumer who has an
11 outstanding balance on 2 payday loans.

12 (e) No lender may charge more than \$10 ~~\$15.50~~ per \$100
13 loaned on any payday loan over the term of the loan. Except as
14 provided in Section 2-25, this charge is considered fully
15 earned as of the date on which the loan is made.

16 (f) A lender may not take or attempt to take an interest in
17 any of the consumer's personal property to secure a payday
18 loan.

19 (g) A consumer has the right to redeem a check or any other
20 item described in the definition of payday loan under Section
21 1-10 issued in connection with a payday loan from the lender
22 holding the check or other item at any time before the payday
23 loan becomes payable by paying the full amount of the check or
24 other item.

25 (h) In addition to any administrative fee, a lender may not
26 charge interest on the amount of cash delivered to the consumer

1 in an equivalent greater than 36% per annum, defined as a
2 365-day year. The rate charged on the outstanding balance after
3 maturity may not be greater than the rate charged during the
4 loan term. Charges on loans shall be computed and paid only as
5 a percentage of the unpaid principal balance. "Principal
6 balance" means the balance due and owing exclusive of any
7 interest, service, or other loan-related charges.

8 (Source: P.A. 94-13, eff. 12-6-05.)

9 (815 ILCS 122/3-5)

10 Sec. 3-5. Licensure.

11 (a) A license to make a payday loan shall state the
12 address, including city and state, at which the business is to
13 be conducted and shall state fully the name of the licensee.
14 The license shall be conspicuously posted in the place of
15 business of the licensee and shall not be transferable or
16 assignable.

17 (b) An application for a license shall be in writing and in
18 a form prescribed by the Secretary. The Secretary may not issue
19 a payday loan license unless and until the following findings
20 are made:

21 (1) that the financial responsibility, experience,
22 character, and general fitness of the applicant are such as
23 to command the confidence of the public and to warrant the
24 belief that the business will be operated lawfully and
25 fairly and within the provisions and purposes of this Act;

1 ~~and~~

2 (2) that the applicant has unencumbered assets of at
3 least \$50,000 per location; and

4 (3) that the applicant has submitted such other
5 information as the Secretary may deem necessary.

6 (c) A license shall be issued for no longer than one year,
7 and no renewal of a license may be provided if a licensee has
8 substantially violated this Act and has not cured the violation
9 to the satisfaction of the Department.

10 (d) A licensee shall appoint, in writing, the Secretary as
11 attorney-in-fact upon whom all lawful process against the
12 licensee may be served with the same legal force and validity
13 as if served on the licensee. A copy of the written
14 appointment, duly certified, shall be filed in the office of
15 the Secretary, and a copy thereof certified by the Secretary
16 shall be sufficient evidence to subject a licensee to
17 jurisdiction in a court of law. This appointment shall remain
18 in effect while any liability remains outstanding in this State
19 against the licensee. When summons is served upon the Secretary
20 as attorney-in-fact for a licensee, the Secretary shall
21 immediately notify the licensee by registered mail, enclosing
22 the summons and specifying the hour and day of service.

23 (e) A licensee must pay an annual fee of \$1,000. In
24 addition to the license fee, the reasonable expense of any
25 examination or hearing by the Secretary under any provisions of
26 this Act shall be borne by the licensee. If a licensee fails to

1 renew its license by December 31, its license shall
2 automatically expire; however, the Secretary, in his or her
3 discretion, may reinstate an expired license upon:

4 (1) payment of the annual fee within 30 days of the
5 date of expiration; and

6 (2) proof of good cause for failure to renew.

7 (f) Not more than one place of business shall be maintained
8 under the same license, but the Secretary may issue more than
9 one license to the same licensee upon compliance with all the
10 provisions of this Act governing issuance of a single license.
11 The location, except those locations already in existence as of
12 June 1, 2005, may not be within one mile of a horse race track
13 subject to the Illinois Horse Racing Act of 1975, within one
14 mile of a facility at which gambling is conducted under the
15 Riverboat Gambling Act, within one mile of the location at
16 which a riverboat subject to the Riverboat Gambling Act docks,
17 or within one mile of any State of Illinois or United States
18 military base or naval installation. The location, except those
19 locations already in existence as of June 1, 2008, may not be
20 within 2,500 feet of the location of any other business
21 licensed under this Act.

22 (g) No licensee shall conduct the business of making loans
23 under this Act within any office, suite, room, or place of
24 business in which any other business is solicited or engaged in
25 unless the other business is licensed by the Department or, in
26 the opinion of the Secretary, the other business would not be

1 contrary to the best interests of consumers and is authorized
2 by the Secretary in writing.

3 (h) The Secretary shall maintain a list of licensees that
4 shall be available to interested consumers and lenders and the
5 public. The Secretary shall maintain a toll-free number whereby
6 consumers may obtain information about licensees. The
7 Secretary shall also establish a complaint process under which
8 an aggrieved consumer may file a complaint against a licensee
9 or non-licensee who violates any provision of this Act.

10 (Source: P.A. 94-13, eff. 12-6-05.)

11 (815 ILCS 122/4-5)

12 Sec. 4-5. Prohibited acts. A licensee or unlicensed person
13 or entity making payday loans may not commit, or have committed
14 on behalf of the licensee or unlicensed person or entity, any
15 of the following acts:

16 (1) Threatening to use or using the criminal process in
17 this or any other state to collect on the loan.

18 (2) Using any device or agreement that would have the
19 effect of charging or collecting more fees, interest, or
20 charges than allowed by this Act, including, but not
21 limited to, entering into a different type of transaction
22 with the consumer.

23 (3) Engaging in unfair, deceptive, or fraudulent
24 practices in the making or collecting of a payday loan.

25 (4) Using or attempting to use the check provided by

1 the consumer in a payday loan as collateral for a
2 transaction not related to a payday loan.

3 (5) Knowingly accepting payment in whole or in part of
4 a payday loan through the proceeds of another payday loan
5 provided by any licensee.

6 (6) Knowingly accepting any security, other than that
7 specified in the definition of payday loan in Section 1-10,
8 for a payday loan.

9 (7) Charging any fees, interest, or charges other than
10 those specifically authorized by this Act.

11 (8) Threatening to take any action against a consumer
12 that is prohibited by this Act or making any misleading or
13 deceptive statements regarding the payday loan or any
14 consequences thereof.

15 (9) Making a misrepresentation of a material fact by an
16 applicant for licensure in obtaining or attempting to
17 obtain a license.

18 (10) Including any of the following provisions in loan
19 documents required by subsection (b) of Section 2-20:

20 (A) a confession of judgment clause;

21 (B) a waiver of the right to a jury trial, ~~if~~
22 ~~applicable, in any action brought by or against a~~
23 ~~consumer, unless the waiver is included in an~~
24 ~~arbitration clause allowed under subparagraph (C) of~~
25 ~~this paragraph (11);~~

26 (C) a mandatory arbitration clause ~~that is~~

1 ~~oppressive, unfair, unconscionable, or substantially~~
2 ~~in derogation of the rights of consumers; or~~

3 (D) a provision in which the consumer agrees not to
4 assert any claim or defense arising out of the
5 contract.

6 (11) Selling any insurance of any kind whether or not
7 sold in connection with the making or collecting of a
8 payday loan.

9 (12) Taking any power of attorney.

10 (13) Taking any security interest in real estate.

11 (14) Collecting a delinquency or collection charge on
12 any installment regardless of the period in which it
13 remains in default.

14 (15) Collecting treble damages on an amount owing from
15 a payday loan.

16 (16) Refusing, or intentionally delaying or
17 inhibiting, the consumer's right to enter into a repayment
18 plan pursuant to this Act.

19 (17) Charging for, or attempting to collect,
20 attorney's fees, court costs, or arbitration costs
21 incurred in connection with the collection of a payday
22 loan.

23 (18) Making a loan in violation of this Act.

24 (19) Garnishing the wages or salaries of a consumer who
25 is a member of the military.

26 (20) Failing to suspend or defer collection activity

1 against a consumer who is a member of the military and who
2 has been deployed to a combat or combat-support posting.

3 (21) Contacting the military chain of command of a
4 consumer who is a member of the military in an effort to
5 collect on a payday loan.

6 (Source: P.A. 94-13, eff. 12-6-05.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.